June 20, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1); WC Docket No. 02-89

Dear Ms. Dortch:

Attached are reply comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International, Inc.	)	
Petition for Declaratory Ruling on the Scope	)	WC Docket No. 02-89
of the Duty to File and Obtain Prior Approval	)	
of Negotiated Contractual Arrangements	)	
Under Section 252(a)(1)	)	
	)	

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (ALTS) hereby files its reply comments in the above-referenced proceeding in response to the Commission's Public Notice regarding Qwest Communications' (Qwest's) Petition for Declaratory Ruling.[1] ALTS urges the Commission to reject Qwest's Petition because it violates the requirements of Section 252 and would lead to discriminatory treatment of competitive carriers.

Qwest requests the Commission to "interpret" Section 252(a)(1) to require ILECs only to submit portions of negotiated interconnection agreements for state approval; however, the statutory language is unambiguous that the entire agreement is subject to state scrutiny. The language in Section 252(a)(1) specifies that carriers may negotiate a binding agreement that "shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."[2] This language in no way limits what else might

[1] Public Notice, WC 02-89 (rel. April 29, 2002).

[2] 47 U.S.C. § 252(a)(1).

be included in the agreement, nor does it limit those parts of the agreement that must be submitted to the state commission for approval under Section 252(e). It merely specifies, at a minimum, what must be included in a negotiated interconnection agreement under Section 252(a)(1). Furthermore, the statute requires that "the agreement" – not parts of the agreement, or even "core parts" of the agreement – be submitted for state commission approval.[3] Thus, there is no plausible interpretation of Section 252(a)(1) that would limit the portions of agreements that must be submitted for approval.[4] ALTS agrees with Focal and Pac-West that Qwest "seeks an 'interpretation' of the law that would change the law."[5] Moreover, "Qwest's statutory ambiguity argument is so patently 'manufactured' and so obviously self-serving, that its very filing suggests a shockingly high degree of disregard for the effectiveness of Commission processes and analysis."[6] The Petition is nothing more than Qwest's desperate attempt to gain absolution for its past behavior that numerous state commissions are currently reviewing. Moreover, as Qwest has recently filed applications for Section 271 authority in five of its in-region states, it is clearly concerned about the impact of those state findings on the Commission's decision whether to grant it authority to provide in-region long distance.

While Section 252 does not require every negotiated contract between an ILEC and a CLEC to be submitted for state approval, any contract related to Sections 251 and 252 does fall under the purview of the Act and must be subjected to the state approval process.[7] For

[3] *Id*.

[4] *See* Mpower Comments at 7.

[5] Focal and Pac-West Comments at 2.

[6] Touch America Comments at 7.

[7] *Id.* at 4.

example, Qwest suggests that provisions regarding "arrangements for contacts between the parties" should not be subject to the approval process.[8] If Qwest is truly referring to a list of scheduled meetings between company representatives, then perhaps such an agreement would not fall under Section 252(a)(1) if those meetings were unrelated to interconnection issues. However, if Qwest is instead referring to a meeting or implementation schedule for interconnection arrangements, then such an agreement would certainly be related to interconnection and be subject to Sections 252(a)(1), (e), and (i) requirements. Other examples proposed by Qwest to fall outside of the 90-day approval process, such as arrangements concerning provisioning and billing and performance standards, would also certainly be related to interconnection and subject to Section 252. Furthermore, as discussed by New Edge Networks, dispute resolution provisions that relate to interconnection arrangements or rates should be subject to Section 252.[9]

If there were truly only two parties involved in the negotiation of interconnection agreements, perhaps there might be less need for regulatory oversight and approval of those agreements. However, the nondiscrimination provisions of the Act and Section 252(i) provide that those privately negotiated terms be offered to other carriers. Although Qwest denies its intent to end-run around Section 252(i) and the Commission's "pick and choose" rules,[10] this is clearly the result they are seeking. Qwest appears to assume that provisions in negotiated interconnection agreements not directly involving a "schedule of charges" and related service

[8] Qwest Petition at 31.

[9] New Edge Networks Comments at 5.

[10] Qwest Petition at 16.

descriptions, even those provisions regarding how those services will be provisioned and billed, are not related to interconnection. ALTS strongly disagrees. Moreover, Qwest's insistence that non-rate matters are irrelevant to interconnection shows its complete disregard for relevant issues facing the competitive industry and pending before the Commission.[11] For example, the competitive industry's continued focus on obtaining uniform national performance metrics and standards for provisioning of UNEs and special access highlights that non-rate matters are very important to competitive carriers, and nondiscriminatory treatment regarding those matters are highly relevant to third parties to an interconnection agreement.

Qwest claims that requiring 90-day state review period stifles private negotiation between ILECs and CLECs; however, it provides no credible explanation for why the mere delay would have a chilling effect.[12] It explains that "it would be much more difficult for ILECs to address CLEC-specific solutions regarding provisioning or billing matters, or to solve day-to-day problems regarding these matters."[13] Such an explanation, however, highlights Qwest's true objective in this proceeding – to eliminate the requirement to offer those "solutions" to other carriers. In fact, Qwest bemoans having to "rely on one-size-fits-all solutions" to address specific carrier concerns.[14] Furthermore, Qwest is not required to seek regulatory approval to address day-to-day billing or provisioning problems, such as decisions to credit a customer's account for incorrect billing or to provision a circuit at 2 pm instead of 8

[11] *Id.* at 17.

[12] *Id.* at 22.

[13] *Id*.

[14] *Id.* at 32.

am. Qwest's suggestion that the result it seeks in its Petition would further those types of "day-to-day" discussions and decisions is disingenuous because those "day-to-day problems" can be readily addressed under the current regime.

Qwest also suggests that that the 90-day approval process would inhibit parties from settling past disputes or arranging detailed administrative matters or "other aspects of their business relationship with *little or no connection to Sections 251 or 252*."[15] As discussed above, agreements regarding past disputes or administrative matters that relate to interconnection are no doubt subject to Section 252. It is difficult to imagine that those negotiations would be stifled because of the possible 90-day delay, but if what Qwest means is that those negotiations would be stifled because of Section 252(i) requirements, then that is likely because Qwest would prefer to discriminate against other carriers than to treat them all equally. It is unclear what Qwest means by the latter description because if aspects of the business relationship do not relate to Sections 251 or 252, then presumably they would not fall under Sections 252(a)(1), (e), or (i). For example, as Touch America notes, an arrangement between an ILEC and a CLEC to sell a building or a fleet of trucks would not be subject to Section 252.[16] To use this argument as further weight in its favor to eliminate issues that *do* relate to Sections 251 and 252 from the requirements of Section 252(e) is again misleading and disingenuous. In short, Qwest can point to no plausible reason why carriers would choose not to voluntarily negotiate agreements because of the 90-day approval process. Qwest's real concern with Section 252(a)(1) is due to Section 252(i), not 252(e), requirements, which further

[15] *Id.* at 22 (emphasis added).

[16] Touch America Comments at 4.

highlights Qwest's true goal in this proceeding – to avoid the Commission's "pick and choose" rules.

Finally, ALTS strongly agrees with New Edge Networks that the Commission should consider the response of competitive carriers in this proceeding when it evaluates whether Qwest's proposal is in the best interests of those carriers, rather than take at face value Qwest's assertion that competitors would benefit.[17] No competitive carrier filed comments in this proceeding supporting Qwest's Petition, and in fact, *none* of the filed comments support Qwest's proposal. That fact should be very telling to the Commission – Qwest's proposal is not in the public interest or that of competitive carriers. Moreover, even Mpower Communications, which previously petitioned the Commission for regulatory relief from the "pick and choose" rules, does not support Qwest's request for widespread relief from Sections 252(a)(1), (e), and (i) requirements. While ALTS does not support Mpower proposal for FLEX contracts, it does agree with Mpower's assessment of Qwest's Petition here – the proposal for a private, rather than public, process could easily be abused and lead to discrimination.[18] Qwest suggests that any discrimination claims could be remedied after the fact; however, as several commenters noted, Qwest's proposal would eliminate the only process by which third party carriers and state commissions would be able to quickly detect and remedy discriminatory behavior.[19]

[17] New Edge Networks Comments at 2-3.

[18] *Id.* at 8.

[19] Focal and Pac-West Comments at 3; New Edge Networks Comments at 7.

CONCLUSION

ALTS urges the Commission to deny Qwest's Petition. Qwest couches his request to alleviate it from the requirements of Section 252(i) by claiming its concern over delaying implementation of interconnection agreements under Section 252(e). While ALTS does not advocate delay in the interconnection process, it believes that in this case, possible delay of implementation for one carrier is warranted, where that delay would benefit the interests of the rest of the industry. The alternative is that certain carriers would get preferential treatment from the ILECs, which is not warranted under the Act.

Respectfully Submitted,

Association for Local Telecommunications Services

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